IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3802 OF 2004

Arunabha Sen, Son of Mihir Sen ...Applicant

Versus

Union of India & Ors. ...Respondents

ALONG WITH

CRIMINAL APPLICATION NO.3920 OF 2004

P.V.V. Satyanarayana S/o
Gollayya Pyla ...Applicant

Versus

Union of India & Ors. ...Respondents

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M/s.Amit Desai with Vikram Nankani, Ishwar Nankani, Madhur Baya & Ajitkumar i/b M/s.Nankani & Associates for Applicants.

Mr.R.F.Lambey for Respondents 1 and 2.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent No.3.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 5, 2004.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith by consent. Mr.Lambey waives notice for Respondents 1 and 2. Mr.Konde-Deshmukh, A.P.P. waives notice for Respondent No.3.

3. As short question is involved, Applications heard for final disposal forthwith, by consent.

4. The Applicants in the respective Applications are being tried for offence punishable under Section 174 of the Indian Penal Code on the ground that they have failed to attend pursuant to the summons issued by the Customs Authority in connection with certain enquiry.

5. The limited grievance in these Applications made on behalf of the Applicants is that the Applicants were never served with any summons personally, which is the requirement of Section 153 of the Customs Act, 1962. On this premiss, it is contended that if there is no valid service of summons, there can be no offence under

Section 174 of the Indian Penal Code attracted qua the Applicants. The factual matrix, however, reveals that the Customs Authorities served the copy of the summons meant for the Applicants on the Liaison Office of M/s.J.Ray McDermott Middle East, Inc., of which, the Applicants are the employees. That summons was served on 25th May 2004. Subsequently, another copy has been served on the registered office of the same Company on 28th May 2004. Once again, the summons was intended to be served on the Applicants. It is the case of the Respondents that another copy of summons was sent by speed post on the Liaison Office of the same Company on 9th June 2004 and eventually one copy was served by hand on one Mr.Sandeep in the registered office of the Company on 28th June 2004. Since the Applicants did not respond to the summons, the complaint has been lodged for offence under Section 174 of the Indian Penal Code on 9th August 2004. According to the Respondents, the Applicants had knowledge about the issuance of summons intended to be served on them. The argument before this Court on behalf of the Applicants, however, is that mere knowledge can be

no substitute for the requirement of service of summons in terms of Section 153 of the Customs Act, 1962.

6. On plain language of Section 153 of the Customs Act, the mandate for serving copy of the summons is by registered post to the person for whom it is intended or to his agent. In the present case, however, admittedly, the summons, though sent on different dates by the Customs Authorities, have not been sent by registered post to the Applicants, for whom the same were intended. To get over this position, it is contended on behalf of the Respondents that the copy of those summonses have been served on the agent of the Applicants, namely in the Liaison Office or registered offence of the Company, of which, the Applicants are the employees. There is, however, nothing on record to suggest that the Applicants had ever authorised any person in the Liaison Office or for that matter, in the registered office to receive summons on their behalf as their agent. If it is so, the service of summons in the Liaison Office or the registered office of a company, of

which, the Applicants are employees, may not be of any avail. However, during the course of arguments, Counsel appearing for the Applicants fairly submitted that without going into the niceties of this legal argument, the appropriate course, is to quash the present complaints, on the assurance given before this Court by the Applicants through their Counsel that the Applicants will make themselves available for interrogation or enquiries, as the case may be, initially before the Indian Consulate in Dubai and if that is not sufficient, they will make themselves available in Mumbai before the concerned Officers of the Customs as and when required, provided sufficient notice for appearance is given to them. The Applicants also assure through their Counsel that they shall regularly appear before the concerned Officer of the Customs whenever required, provided the Customs Authorities would give at least 72 hours prior notice before arrest if they are in Mumbai and seven days prior notice, if they are away from Mumbai (abroad), so as to enable them to take recourse to appropriate remedy as may be permissible by law. This submission, to my mind,

is sufficient to secure the interest of the authorities investigating into the evasion of customs duty. In the circumstances, the following order would meet the ends of justice:

(a) Complaint and non-bailable warrant in Criminal Case No.197/CS/2004 and 199/CS/2004 are hereby quashed.

(b) The Applicants shall join in the investigation as per the undertaking given before this Court through their Counsel, which has been accepted, by remaining present before the Consulate of India in Dubai, U.A.E., whenever required and co-operate with the investigation.

(c) The issue regarding jurisdiction is left open to be considered in appropriate proceedings.

(d) In the event, the presence of the Applicants is required at Mumbai, the Respondents may, with at least one week’s prior notice, call the Applicants on any working day, permitting the Applicants to be accompanied by Counsel during the

interrogation which shall be held during office hours only. The interrogation shall, as far as possible, be not more than two days at a time and with a gap of at least seven days in between two interrogations, so as to enable the Applicants to freely travel and attend to their work in India as well as abroad.

(e) The Respondents shall not summon the Applicants on the same dates and/or together, so that the working of the Applicants' employers is not affected in any manner.

(f) The Respondents shall not take any coercive steps or measures including arrest or insist for deposit of passport of the Applicants in connection with the subject matter under investigation unless sufficient notice is given to the Applicants of their intention to do so, consequent to which, it will be open to the Applicants to take recourse to such remedy as may be permissible by law.

(g) Further, in the event, the Respondents

decide or intend to arrest the Applicants, they shall give seven days clear notice to the Applicants, if they are abroad or not in Mumbai, and 72 hours prior clear notice, if they are in Mumbai, so as to enable the Applicants to take recourse to such remedy as may be permissible by law. This, however, is subject to the condition that as and when the Applicants would move application for anticipatory bail under Section 438 of the Criminal Procedure Code, 1973, the Applicants shall remain personally present in the concerned Court at least on the first date of hearing of their application and subject to further orders to be passed by that Court.

(h) The Respondents agree that communication to ensure the presence of the Applicants, or for any proceedings, can be served on the Applicants through the Consulate of India in Dubai, U.A.E. giving proper time frame, as mentioned earlier, to enable the Applicants to take recourse to such remedy as may be permissible by law.

(i) Mr.P.V.V.Satyanarayana - Applicant in

Criminal Application No.3920 of 2004 shall appear in the Office of Mr.Ashok Kumar, Superintendent of Customs (SIIB) (Imports) New Customs House, Annex Building, 10th Floor, Ballard Estate, Mumbai - 400 001 on 18th October 2004 at 11.00 a.m. and will make himself available for interrogation initially for a period of two days and thereafter as may be required by the Officer, on terms referred to earlier.

(j) Insofar as Mr.Arunabha Mihir Sen, Applicant in Criminal Application No.3802 of 2004 is concerned, he shall appear in the Office of Mr.Ashok Kumar, Superintendent of Customs (SIIB) (Imports) New Customs House, Annex Building, 10th Floor, Ballard Estate, Mumbai - 400 001 on 25th October 2004 at 11.00 a.m. and will make himself available for interrogation initially for a period of two days and thereafter as may be required by the Officer, on terms referred to earlier.

. Applications disposed of on the above terms.

A.M.KHANWILKAR, J.